

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

RECEIVED CLERK'S OFFICE

2007 NOV 29 A 10: 09

John P. Brown, et al., )  
)  
Plaintiff, )  
)  
-versus- )  
)  
State of South Carolina, et )  
al., )  
)  
Defendants. )

C. A. No. 2:00-3215-RBH-BSC

DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON

**ORDER AND  
REPORT AND RECOMMENDATION**

This is an action brought by inmates of the South Carolina Department of Corrections pursuant to 42 U.S.C. § 1983 alleging that the defendants violated their constitutional rights in requiring them to submit a blood sample under the South Carolina DNA Act and pay a \$250 fee required by the statute. On October 23, 2007, the plaintiffs were directed to advise the court whether they wished to go forward with this action given its age and recent decisions of the court.

Subsequently the Orders mailed to the address of record of a number of plaintiffs were returned as undeliverable. These plaintiffs are:

Billy M Ackerman  
James R Adams  
William H Adams  
Donnie Aiken  
Robert Alston  
Donald D Anderson  
Eddie L Arnold  
Scott Atkinson  
Wayne Atkinson

James K Austin  
Bruce E Bailey  
Benjamin Bannister  
Christopher Baskett  
Willie W. Beasley  
Bryan Bell  
Michael Benbow  
James Benge  
Levan Bennett  
Reggie Bennett  
Tony Bennett  
Kelvin Berry  
Robert Bigelow  
Billy Blackmon  
Martin Bolick  
George Bollin  
Welton Booker  
Roy Bowen  
Clarence Bowie  
Robbie Boykin  
Chris Bradley  
Marvin Bradley  
Johnny Ray Brewer  
Roy Brewer  
Herman Brisbon  
Gary Brooks  
Walter Brower  
Carlos Brown  
George E. Brown  
Keith Jerome Brown  
Kevin Brown  
Leonard A Brown  
Jason S Bryan  
Michael Buckman  
Pervis Burger  
Sandra Jean Byars  
Tonya Byars  
Michael Byer  
Craig Calhoun  
Tracey Cameron  
Sheldon Cannon  
Robert Edward Carrillo  
Eugene Carter  
Roderick Cherry  
Marcellous Clark  
Charles L Clayton  
Wayne Clegg  
Harry Clemons

Gary L Collier  
Alex Cooper  
Junie Cothran  
Latee Crawford  
Theodore Culp  
Matthew Curry  
Terry Dacus  
Lorenzo Daley  
Alvin Davis  
Robin Davis  
William Deans  
Alton Dendy  
Allen Derion  
Marshall Dicks  
James Dingle  
Casey Disher  
Reginald Doughthy  
David Doyle  
Jimmy Doyle  
Steve H Doyle  
Edward A Duelley  
Douglas Edwards  
David Ellison  
William Marvin Ellison  
Eric Farr  
Terry Anthony Ferguson  
Steve Finley  
Efrin M Flores  
Kirby Fogle  
George Frazier, Jr.  
Richard Frazier  
Richard Fullman  
Glen Gallman  
Charles E Gardner  
Herbert German  
David Gibson  
Tony Gillard  
Alex Girdler  
Fred A Golden  
Benjamin Gonzales  
Henry Goss  
Alvin Gray  
Gary Grovenstein  
William Grubbs  
Shannon Gurley  
Timothy Hackett  
Morris W Hall, Jr.  
Donald H Hallock

Henry Hardy  
David R Harrison  
McKinley Harrison  
Thomas A Harrison  
Jerome Hart  
Darrell Hayes  
Dennis Hayes  
Lewis Hendrick  
Clifton Henry, Jr.  
David C Hill  
Michael Hill  
Mark Hilton  
Tracey Hollis  
Matthew T Hollman  
Robert L Howell  
Charles Hughes  
Terry Isenock  
Melvin Isaac  
Ronald Ivey  
Russell Jackson  
Steve Jackson  
NFN James  
Bonnie James  
Alfonzo Jefferson  
John M Jenkins  
Tracey Jenkins  
Melvin Jerome Jeter  
Bernard E Johnson, III  
Dwaine L Johnson  
Jerry Johnson  
Ricky Johnson  
Terry Johnson  
Harvey L Jones  
John L Jones  
Melissa W Jones  
Jeral Joyner  
Jamel Kabir  
Jesse Key  
Alonzo King  
Joseph King King  
Vernon L Kinkle  
Frank Laney  
Horrace Lathen  
Michael Lee  
Randy Lester  
Phillip Dean Lowe  
James Lyons  
James Evan Mack

Thomas N Marshall  
Willie J Martin  
Donnie Mathers  
Richard Grey Mayson  
William McAliter  
Donald McCloud  
Russell McGill  
James McMilliam  
Tracey McMilliam  
Gardner McMillian  
Melvin Mickens  
Corneal Milledge  
Michael F Miller  
Timothy Mills  
Timothy Morton  
Herbert Mosely, Jr.  
Shariff Mulligan  
Curtis Mulloy  
Brad Myers  
Carol Nevling  
Roy Nicholson  
Arthur Billy Nix  
Danny Nix  
Travis O'Neil  
Johnny Otiz  
Roger Palmer  
John Wilbur Parker  
Christopher Parley  
Jermaine Person  
Garith Phillips  
Jacok Pickney  
Larry Pierce  
Archie Porter  
John Potts  
Melvin Pough  
Henry Raford  
Jerome Rainey  
Henry Calvin Rascoe  
Sa'id Rashid  
Burnie Ratliff  
John D Ray  
Kevin Ray  
Victor Reddick  
Samuel Reed  
LaDerrick Richardson  
Rodney Richardson  
Juan Borges Rivera  
Leonard Rivera

Henry Robinson  
Herbert Robinson  
Donald M Rogers  
Charles R Rollins  
Adalid Rubio  
Floyd Ramsey  
Anthony Russ  
Thomas Sanders  
Steve Sawyer  
Keith Schulty  
Arby Scott  
Silvester Scott  
Wayne Scott  
Matthew Sellers  
Willie Joe Selph  
Titus Sharp  
Emiterio Silvano  
Christopher Slater  
Maurice Smalls  
Eric Smiley  
Avon Smith  
Earl Smith  
Eddie M Smith  
Jerome E Smith  
Edward L Smoak, Jr.  
Mark Snipes  
Joshua Stewart  
George Stockwell  
Larry Stokes  
Ronnie D Suggs  
Terrell Taylor  
Lelmon Jackson Terrell  
James Neal Tino  
Jimmy Todd  
Larry Randall Todd  
Timothy Tucker  
Michael Varnadoe  
Anthony Vuolo  
Kevin Washington  
Paul W Washington  
Neal K White  
Michael Whitten  
Thurston Wideman  
Mark Wiles  
Charle E Williams  
DeWitt Williams  
H Williams

Marion Williams  
Leon Woodford

On October 26, 2000, shortly after this action was removed to this court, the plaintiffs were advised by the undersigned, "You are ordered to always keep the Clerk of Court advised in writing (Post Office Box 835, Charleston, South Carolina 29402) if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to file something you are required to file within a deadline set by a District Judge or a Magistrate Judge, your case may be dismissed for violating this order. Therefore if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address. Your failure to do so will not be excused by the court." (Docket # 8).

Since it appears that the above named plaintiffs have not kept the court advised of their addresses, it is appropriate and necessary to dismiss this action with regard to them.

The court has also been advised that during the pendency of this action the following plaintiffs have died:

Tony Brooks  
John P Brown  
James E Ellison  
Jake Elmore  
Nathan J Jones

Willie Miller  
Harold G Moss

When the death of a party to an action is suggested upon the record during the pendency of the action, the court must dismiss the action as to the deceased party unless a proper party is substituted for the deceased party.

Rule 25(a) of the Federal Rules of Civil Procedure provides:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

Accordingly, unless an appropriate party makes a motion under Rule 25 of the Federal Rules of Civil Procedure for substitution as to an above listed deceased party not later than February 8, 2008, a Report and Recommendation will be entered in favor of dismissal as to the deceased parties.

**NOW THEREFORE, IT IS RECOMMENDED** that, because of the failure to keep the court advised of the proper mailing addresses as previously ordered by the court, this action be dismissed as to the following plaintiffs:



Billy M Ackerman  
James R Adams  
William H Adams  
Donnie Aiken  
Robert Alston  
Donald D Anderson  
Eddie L Arnold  
Scott Atkinson  
Wayne Atkinson  
James K Austin  
Bruce E Bailey  
Benjamin Bannister  
Christopher Baskett  
Willie W. Beasley  
Bryan Bell  
Michael Benbow  
James Bengé  
Levan Bennett  
Reggie Bennett  
Tony Bennett  
Kelvin Berry  
Robert Bigelow  
Billy Blackmon  
Martin Bolick  
George Bollin  
Welton Booker  
Roy Bowen  
Clarence Bowie  
Robbie Boykin  
Chris Bradley  
Marvin Bradley  
Johnny Ray Brewer  
Roy Brewer  
Herman Brisbon  
Gary Brooks  
Walter Brower  
Carlos Brown  
George E. Brown  
Keith Jerome Brown  
Kevin Brown  
Leonard A Brown  
Jason S Bryan  
Michael Buckman  
Pervis Burger  
Sandra Jean Byars  
Tonya Byars  
Michael Byer  
Craig Calhoun

Tracey Cameron  
Sheldon Cannon  
Robert Edward Carrillo  
Eugene Carter  
Roderick Cherry  
Marcellous Clark  
Charles L Clayton  
Wayne Clegg  
Harry Clemons  
Gary L Collier  
Alex Cooper  
Junie Cothran  
Latee Crawford  
Theodore Culp  
Matthew Curry  
Terry Dacus  
Lorenzo Daley  
Alvin Davis  
Robin Davis  
William Deans  
Alton Dendy  
Allen Derion  
Marshall Dicks  
James Dingle  
Casey Disher  
Reginald Doughthy  
David Doyle  
Jimmy Doyle  
Steve H Doyle  
Edward A Duelley  
Douglas Edwards  
David Ellison  
William Marvin Ellison  
Eric Farr  
Terry Anthony Ferguson  
Steve Finley  
Efrin M Flores  
Kirby Fogle  
George Frazier, Jr.  
Richard Frazier  
Richard Fullman  
Glen Gallman  
Charles E Gardner  
Herbert German  
David Gibson  
Tony Gillard  
Alex Girdler  
Fred A Golden

Benjamin Gonzales  
Henry Goss  
Alvin Gray  
Gary Grovenstein  
William Grubbs  
Shannon Gurley  
Timothy Hackett  
Morris W Hall, Jr.  
Donald H Hallock  
Henry Hardy  
David R Harrison  
McKinley Harrison  
Thomas A Harrison  
Jerome Hart  
Darrell Hayes  
Dennis Hayes  
Lewis Hendrick  
Clifton Henry, Jr.  
David C Hill  
Michael Hill  
Mark Hilton  
Tracey Hollis  
Matthew T Hollman  
Robert L Howell  
Charles Hughes  
Terry Isenock  
Melvin Isaac  
Ronald Ivey  
Russell Jackson  
Steve Jackson  
NFN James  
Bonnie James  
Alfonzo Jefferson  
John M Jenkins  
Tracey Jenkins  
Melvin Jerome Jeter  
Bernard E Johnson, III  
Dwaine L Johnson  
Jerry Johnson  
Ricky Johnson  
Terry Johnson  
Harvey L Jones  
John L Jones  
Melissa W Jones  
Jeral Joyner  
Jamel Kabir  
Jesse Key  
Alonzo King

Joseph King King  
Vernon L Kinkle  
Frank Laney  
Horrace Lathen  
Michael Lee  
Randy Lester  
Phillip Dean Lowe  
James Lyons  
James Evan Mack  
Thomas N Marshall  
Willie J Martin  
Donnie Mathers  
Richard Grey Mayson  
William McAliter  
Donald McCloud  
Russell McGill  
James McMilliam  
Tracey McMilliam  
Gardner McMillian  
Melvin Mickens  
Corneal Milledge  
Michael F Miller  
Timothy Mills  
Timothy Morton  
Herbert Mosely, Jr.  
Shariff Mulligan  
Curtis Mulloy  
Brad Myers  
Carol Nevling  
Roy Nicholson  
Arthur Billy Nix  
Danny Nix  
Travis O'Neil  
Johnny Otiz  
Roger Palmer  
John Wilbur Parker  
Christopher Parley  
Jermaine Person  
Garith Phillips  
Jacok Pickney  
Larry Pierce  
Archie Porter  
John Potts  
Melvin Pough  
Henry Raford  
Jerome Rainey  
Henry Calvin Rascoe  
Sa'id Rashid

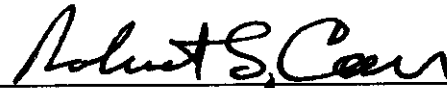
Burnie Ratliff  
John D Ray  
Kevin Ray  
Victor Reddick  
Samuel Reed  
LaDerrick Richardson  
Rodney Richardson  
Juan Borges Rivera  
Leonard Rivera  
Henry Robinson  
Herbert Robinson  
Donald M Rogers  
Charles R Rollins  
Adalid Rubio  
Floyd Ramsey  
Anthony Russ  
Thomas Sanders  
Steve Sawyer  
Keith Schulty  
Arby Scott  
Silvester Scott  
Wayne Scott  
Matthew Sellers  
Willie Joe Selph  
Titus Sharp  
Emiterio Silvano  
Christopher Slater  
Maurice Smalls  
Eric Smiley  
Avon Smith  
Earl Smith  
Eddie M Smith  
Jerome E Smith  
Edward L Smoak, Jr.  
Mark Snipes  
Joshua Stewart  
George Stockwell  
Larry Stokes  
Ronnie D Suggs  
Terrell Taylor  
Lelmon Jackson Terrell  
James Neal Tino  
Jimmy Todd  
Larry Randall Todd  
Timothy Tucker  
Michael Varnadoe  
Anthony Vuolo  
Kevin Washington

Paul W Washington  
Neal K White  
Michael Whitten  
Thurston Wideman  
Mark Wiles  
Charle E Williams  
DeWitt Williams  
H Williams  
Marion Williams  
Leon Woodford

**FURTHER IT IS ORDERED** that appropriate parties, if any, must make motions under Rule 25 of the Federal Rules of Civil Procedure for substitution not later than February 29, 2008, as to the following deceased parties:

Tony Brooks  
John P Brown  
James E Ellison  
Jake Elmore  
Nathan J Jones  
Willie Miller  
Harold G Moss

**IT IS SO ORDERED.**



ROBERT S. CARR  
UNITED STATES MAGISTRATE JUDGE

Charleston, South Carolina

November 28, 2007

**Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court judge need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
P.O. Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985).